July 7. 1778.

Unto the Right Honourable, the Lords of Council and Session,

THE

PETITION

OF

The PROCURATOR FISCAL of the Lyon Court, for the intereſt of the LORD LYON, King of Arms,

Humbly Sheweth,

THAT in the proceſs depending before the Court, between the petitioner and Mr William Murray of Touchadam and Pitlochy, your Lordſhips, the 25th June laſt, pronounced the following interlocutor: "On report of Lord Hailes, Ordinary; and having adviſed the informations given in for both parties; the Lords find, That the Lord Lyon can exact no higher fees for matriculating Mr Murray of Touchadam's arms than ten merks, being the fees exigible by the ſtatute 1672, from a Baron; and find Mr Murray entitled to the expence he has incurred in this proceſs, prior to the laſt remit to the Lord Ordinary, and appoint an accompt thereof to be given in to the Court; find him alſo entitled to the expence of extracting the whole decreet to follow hereon, as the ſame ſhall be aſcertained by the collector of the clerks dues; and decern."

 This

This judgment, in effect, decides, that the whole duties of the office of Lord Lyon, as ſpecified in the ſtatute 1672, reſpecting the regulation and matriculation of arms, are to be performed for the very ſmall ſum of ten merks Scots, to a perſon holding the rank of a Baron, and of diſtinguiſhed family and opulence; and it further loads the petitioner with expences of plea, for maintaining and aſſerting the rights of his office, as explained by very reſpectable authority, and handed down to him by his predeceſſors. Whatever reſpect, therefore, he may have for your Lordſhips deciſion; and however unwilling he may be again to bring before the Court a cauſe which has been the ſubject of long litigation, he hopes he will be pardoned for ſubmitting this branch of it to your Lordſhips review, and for humbly praying for an alteration in a judgment which he muſt, with deference, conſider as bearing ſo hard upon him.

In order to obtain this alteration, he ſhall not trouble your Lordſhips with a long recital of the proceedings in this cauſe. The *firſt* part of the interlocutor, having relation to the dues of matriculation only, it will ſuffice to ſtate a few of the ſteps of proceſs, in order to ſhow, that theſe dues ought to be heightened; and, with reſpect to the *ſecond* part of it, finding the petitioner liable in expences, the queſtions have been ſo lately before the Court, that when he comes to treat of that part, he ſhall hold it to be ſufficient, ſhortly to remind your Lordſhips of ſuch circumſtances in the caſe, as will ſatisfy the Court, that he had a *probabilis cauſa litigandi*, in defending what he was led to believe were the rights of his office.

Upon the *firſt* point then, The dues of matriculation; it is only neceſſary to remind your Lordſhips, that early in this cauſe, the petitioner reſtricted the claim for penalties, which had been awarded in the Lyon Court againſt the defender Mr Murray, to the dues of matriculation; and with reſpect to theſe, the Lord Hailes, Ordinary, by interlocutor, of date the 13th February 1776, made the following reſervation: "Reſerving always to the ſaid Procurator Fiſcal, "to charge the ſaid William Murray to matriculate his armorial "bearings in the regiſter of the Lyon Court, in terms of the ſtatute "1672, and to pay the fees exigible from a Baron, and no more, as "the ſaid ſtatute bears."

The petitioner humbly conceiving himſelf aggrieved by this interlocutor, which ſeemed to confine his demand for matriculation to the dues ſpecified in the act of Parliament, which, in his apprehenſion, applied to the dues of extract only, thought it his duty to bring this, as well as other parts of the Lord Ordinary's interlocutor under your Lordſhips review, by reclaiming petition; and the

Court

Court, of this date, adhered to the Lord Ordinary's interlocutor, Dec. 5. 1776.
" excepting as to the fees exigible on matriculation, as to which,
" remit to the Lord Ordinary, to call and hear parties procurators
" further thereon, and to do as he ſhall ſee cauſe."

By this judgment of the Court, the queſtion reſtricting the fees exigible on matriculation was kept open; and what is more material for your Lordſhips obſervation, by theſe interlocutors of the Lord Ordinary, and of the Court, as well as by the judgment reclaimed againſt, it ſeems now to be a fixed point, that Mr Murray of Touchadam, the defender, is ſtill bound to have his arms matriculated in the books of the Lyon Court; and, that being fixed, the only queſtion remaining before your Lordſhips was, what fees were exigible by the Lyon, as dues for performing this part of his duty, which is called *matriculation?*

When the cauſe was remitted to the Lord Ordinary, the petitioner, by a condeſcendence hereto annexed, endeavoured to ſhow, that theſe dues, ſo far as aſcertained by uſage, with reſpect to perſons of the defender's rank, and when coats armorial ſo circumſtanced, (that is accompanied with ſupporters, *&c.*) were to be matriculated, amounted to about 29 *l.* Sterling; and the defender himſelf, in page 16. of his information, ſeemed to admit, that the demand would not have been unreaſonable, if it had been limited to 12 *l.* Sterling. The paſſage referred to is in theſe words: " And, at any rate, if Defender's information, p. 16.
" the rule of that act could be departed from, there certainly could
" never be any colourable reaſon for ſubjecting the defender in fees
" beyond thoſe which are uſually exacted, from ſuch as have ob-
" tained grants of ſupporters from the Sovereign, when afterwards
" matriculated in the Lyon Office, or ſuch as have been long in uſe
" to bear them, without any grant or right whatever; and which it
" is confeſſed by the purſuer, do only amount to about 12 *l.* Ster-
" ling. The defender's right to his arms and ſupporters, which
" your Lordſhips have found to have been legally veſted in his pre-
" deceſſors, prior to the act 1672, and which muſt now be pre-
" ſumed to have flowed originally from the Sovereign, who is the
" fountain of honour, muſt certainly put him at leaſt upon an
" *equal* footing with thoſe who have *recently* obtained the like ho-
" nour from the ſame quarter."

The petitioner does not mean, in the preſent argument, rigidly to inſiſt upon the high dues which have been exacted from perſons of the ſame rank, where any diſſimilarity of circumſtances can be alledged. n this queſtion reſpecting the fees of office, without departing rom his former argument, he is willing to conſider Mr Murray in the

the favourable view in which he ſeems to place himſelf, independent of the ſtatute 1672, and to limit the preſent demand to the above-mentioned ſum in the information. But what the petitioner is moſt anxious to demonſtrate is this, That the dues of matriculation cannot be limited to the ten merks ſpecified in the act of Parliament; and he is hopeful to make it appear, upon a due conſideration of the nature of the Lyon's Office and duty, that the ſtatute 1672 did not make any ſuch modification of the Lyon's dues upon matriculation, but that the enactment of that ſtatute is ſolely confined to the dues of an extract; a meaſure which that ſtatute ſeems to have introduced or recommended, as proper evidence to perſons entitled to bear coats armorial, that the requiſites of the ſtatute had been fully complied with.

The office of Lyon King of Arms appears to have been one of thoſe conſtitutional dignities, which, in a feudal ſtate, and whilſt feudal manners prevailed, was held in very high eſtimation. The dignity attending the office appears to have been very great, from a paſſage in Sir George Mackenzie's Heraldry, page 583. "How ſacred the Lyon's office is with us (ſays that learned author) appears "among many other inſtances, from this, That the Lord Drummond was, *anno* 1515 (as Leſly obſerves in his Hiſtory) forfeited, "for ſtriking the Lyon, *vita ac dignitate ægre conceſſis.*" He is mentioned by Craig, among the high officers of the State, to whom feus properly ſo called were aſſigned: And anciently, in this kingdom, it would ſeem, that his powers, as well as his rewards, muſt have been defined by uſage; for, although mention is made of his duties, and of his privileges, in various ſtatutes preceding the act of Parliament 1672, the reward which was to attend the performance of it is no where limited or defined.

The ſtatute 1592, upon a narrative that there had been great abuſe among the lieges of this realm, in their bearing of arms, *&c.* gives and grants full power and commiſſion to the Lyon King of Arms, to viſit the haill arms of noblemen, *&c.* to diſtinguiſh, and decern them to matriculate them in their books and regiſters,—and to put inhibition to all the common ſort of people not worthy by the law of arms to bear any ſigns armorial; and it enacts a forfeiture of the goods and gear upon which arms ſhall be found graven or painted, with a penalty to the Lyon of 100 *l.* Scots; ſo that, in this ſtatute, your Lordſhips will obſerve the power of matriculation is clearly expreſſed as belonging to the Lyon, together with other powers or privileges; and, as this power would, no doubt, be exerted by the Lyon, after the date of this ſtatute, there can be as little doubt, that the performance

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of this duty would be attended with certain dues or perquiſites. It is not indeed defined what theſe dues and perquiſites were; and it is impoſſible, at this diſtance of time, to eſtabliſh, or to prove, what they were. But, when the high point of view in which the Lyon then ſtood is conſidered, and when your Lordſhips reflect upon the ſtate of the country at that period of our hiſtory, how ambitious people were of being placed in the rank of gentlemen of blood and family, or to preſerve the evidence that they were deſcended of noble ſtock and lineage, as the act expreſſes it, it is impoſſible to doubt, that the perquiſites attending ſo honourable a badge of diſtinction muſt have then been very conſiderable; nor can it be doubted, that this officer, veſted with ſuch ample and favourite powers, would be ſuitably rewarded. Even the high penalty attending the contravention of the ſtatute, the bearing of arms without matriculation, ſufficiently demonſtrates, that the obtaining of this favour could not then be limited to the paultry ſum of ten merks Scots; for, who would have ſubmitted or expoſed himſelf to the forfeiture of his goods and chattels, as well as to the penalty of 100 *l.* Scots, if he could ſecure himſelf from the exertion of the Lyon's powers by payment of ſo ſmall a ſum.

Here, then, is evidently a period of our law, at which it is impoſſible to ſuppoſe, that the dues of matriculation in queſtion could have been limited by ten merks Scots; and as no ſum is defined in this ſtatute, though the power to compell matriculation appears to have been unqueſtionable, the perquiſites attending this part of the Lyon's duty muſt have then, as it has ever ſince, depended upon the uſage of the Court.

The above obſervations upon this ſtatute prove, *firſt*, That, from the date of that ſtatute till the ſtatute 1672, a period of near an hundred years, the dues of matriculation muſt have depended upon uſage; and, *2dly*, That theſe dues could not be limited to ſo ſmall a ſum as that of ten merks Scots.

The only queſtion, then, that remains to be decided by your Lordſhips, muſt be, what change or alteration was introduced by the ſtatute 1672.

With reſpect to that ſtatute, your Lordſhips will, from the ſlighteſt peruſal of it, perceive, that it was not meant to limit or abridge the privileges or powers of the office of Lyon King of Arms; and the evil that it was meant to redreſs, was not the high exactions which the Lyon King of Arms had made in the diſcharge of his duty; on the contrary, the ſtatute expreſsly ſets out with an approbation of the enactments contained in the ſtatute 1592, and the evil

to be redreſſed was the uſurpation or uſe of arms without the authority of the Lyon King of Arms. To repreſs that, the powers are repeated to viſit them, to matriculate, and to fine and eſcheat; and, for the ſame purpoſe, letters of publication are ordered to be made of the act, charging all barons, gentlemen, *&c.* within a year of the date, to ſend an account of their arms, *&c.* The power, likewiſe, of giving arms to virtuous and well-deſerving perſons, is mentioned in the ſtatute; and there is added, "And *extracts* of all arms "expreſſing the blazoning of the arms under their hand and ſeal of "office, for which ſhall be paid to the Lyon, the ſum of twenty "merks by every Prelate and Nobleman, and ten merks by every "Knight and Baron, and five merks by every other perſon bearing "arms, and no more."

The ſtatute contains a further proviſion: "And it is ſtatute and "ordained, with conſent foreſaid, that the ſaid regiſter ſhall be re"ſpected as the true and unrepealable rule of all arms and bearings "in Scotland, to remain with the Lyon's Office, as a public regiſter "of the kingdom, and to be tranſmitted to his ſucceſſor in all time "coming; and that whoſoever ſhall uſe any other arms any man"ner of way, after the expiring of year and day from the date of "the proclamation to be iſſued hereupon, in manner foreſaid, ſhall "pay 100 *l.* money, *toties quoties*, to the Lyon, and ſhall likewiſe "eſcheat to his Majeſty all the moveable goods and gear upon which "the ſaid arms are engraven or otherwiſe repreſented."

This laſt proviſion, it muſt be obſerved, was exceedingly unneceſſary, if the whole dues for performance of the ſeveral duties of the office for the diſtinguiſhing with congruent differences for the matriculating, for the giving arms, and for the furniſhing of extracts, were to amount to no more than ten merks; for, it is impoſſible to ſuppoſe, that any perſon could be ſo abſurd as to tranſgreſs, or thereby become liable in ſuch pains and penalties, to avoid payment of ten merks.

It, with deference, appears equally abſurd to ſuppoſe, that ten merks was all that could be demanded for exerciſing each of theſe powers. The ſum fell certainly to be proportioned to the nature of the duty diſcharged, or to the privilege conferred; and to ſay, that the Lyon was to exerciſe his knowledge and judgment in the ſcience of heraldry, in diſcerning proper arms, a ſcience attended with much trouble and difficulty; and to confer ſuch arms upon the well-deſerving perſon, for the ſame reward at which his clerk was to furniſh an extract of arms already diſcerned, conferred, and matriculated,

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would be to tranſgreſs every bound of juſt proportion between the dues exigible and the duty performed.

The only ſound conſtruction, then, of the ſtatute which can be adopted, is to conclude, that the dues of matriculation, *&c.* were left upon the former footing of uſage; and that the meaſure ſpecially pointed out by this act, that of giving extracts, was the only thing, the dues of which was meant to beregulated by the ſtatute.

Indeed, it was the only thing that properly could be regulated, for the extent of an extract, was a thing of a definite nature; whereas the trouble attending the other powers with which the Lyon was veſted, might vary according to the circumſtances of the caſe. The matriculation, as appears from the diplomas in Sir George Mackenzie, is a matter of nicety, and ſometimes attended with curious hiſtorical deduction. Nay, if a competition ſhould enſue, which was no unlikely caſe in thoſe days, concerning the matriculation of particular arms, it might prove a matter of much labour, nice diſquiſition, and long diſcuſſion; and the act ſuppoſes that this might be the caſe; for, in order to matriculation, teſtificates are required from perſons of honour, *&c.* concerning the verity of uſing the arms, and of the deſcent; and it, as well as the former law, ſuppoſes, That perſons might uſurp and claim arms which belonged to their chief. The ſame thing may be ſaid as to the diſcerning and diſtinguiſhing of arms, and the conferring of arms on well-deſerving perſons, in all which there might be an exerciſe of judgment, and an inveſtigation into, as well as an application of the principles of the ſcience of Heraldry; a ſcience evidently of much nicety, and then in full obſervance..

The petitioner, therefore, apprehends, he might reſt his plea upon this, that as theſe ten merks were in no ſhape adequate to the performance of all the duties; ſo, neither with propriety, nor obſerving a due proportion, which the legiſlature muſt be ſuppoſed to have done, can they be conſidered as a reward proper for each of the duties and powers of the Lyon taken ſeparately.

It muſt follow, then, that this fee of ten merks is applicable only to the extracts, to which alone it is annexed, and to which only it can apply; and the immediate ſubſequent clauſe, conſtituting the regiſter, and giving authenticity to theſe extracts, ſhows, that this muſt have been the view of the legiſlature; whereas the other duties of the office were left upon the footing of uſage, agreeably to which, they had been regulated for more than a century before; and the general clauſe about forfeiture and penalty is properly repeated, as applicable to enforce them, though on the other hand, it could not be meant to have the leaſt effect, with reſpect to the extracts, as indeed

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it was abſolutely unneceſſary for that purpoſe, which could be attained for payment of ten merks only, however proper it was to enforce compliance with the other requiſites of the ſtatute.

This laſt obſervation plainly ſhows, that the ſtatute had different objects in view, to attain which, it introduced different proviſos and enactments. The extracts ſeem to have been a new thought; and, accordingly, new proviſion is made for it, by payment of ten merks; the matriculation, *&c.* was left upon the old footing, to be regulated by uſage in time coming, as it had been in times paſt. And having their performance, as required by ſtatute, enforced by repetition of the former penalties confined to them, and not neceſſary to be applied to the taking of extracts, a thing every perſon would take for his own ſecurity; ſo that the extracts ſtand clearly upon a new and ſeparate footing.

Indeed, it cannot eſcape your Lordſhips, that the appointment of a definite reward for extracts, did juſtice to every party; the labour in all ages, would continue nearly the ſame; and, if living grew higher, from the progreſs of learning, writing would become cheaper, as being a more common accompliſhment; but, with reſpect to matriculation, *&c.* which were acts of judgment, and required exerciſe of the ſcience of Heraldry; it muſt have been obvious, that being of a very particular nature, and neceſſarily confined to a very few individuals, as the price of living increaſed, it muſt have become more difficult to obtain the ſervice, and application of perſons ſkilled in that art; it was proper therefore, to leave this matter upon the footing of uſage, to be determined and regulated, according to time, occaſion, and circumſtances; as this was the only way in which a juſt reward could be given, in proportion to the induſtry, ſcience and time required, or accommodated to the ſituation rank and living of the perſon concerned in the diſcharge of theſe duties.

In ſupport of theſe arguments the petitioner has formerly ſhown, That the dues of matriculation, in circumſtances ſomewhat ſimilar to the preſent, were regulated by uſage, and were never reſtricted to the ten merks, applied only to extracts in the act of Parliament.

It is true, indeed, his condeſcendence did not go very far back, and weight has been laid upon the circumſtance, that he had not produced the books in the office, reſpecting the dues of Court. He was, indeed, unwilling to make any production of this kind, thinking it unneceſſary, and of bad precedent; but, had he been expreſsly called upon by the Lord Ordinary to produce theſe books, they would have been produced to his Lordſhip; and, to remove this objection, he has now produced the oldeſt book he has, reſpecting the dues of office, and which, it is ſtill true, does not go very far back;

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but your Lordſhips will obſerve, that there is a very obvious reaſon for this. The books which contain the dues of Court are no part of the public regiſter, they are no more than private documents, by which the officers of Court accompt to each other for the dues they have received: When that accompting is finiſhed there is no longer a neceſſity for preſerving them; and, accordingly, they have not been preſerved. The book the petitioner at preſent produces, is properly a reſponde book, for accompting to the Lord Lyon, containing, in general, only that part of the dues payable to him; and, if it had been completely wrote out, it is very likely it might have been thrown by; as it is, however, it goes back for above twenty years; and it clearly proves this propoſition, that, in no one inſtance, have the regulations of the ſtatute 1672, if ſuppoſed to extend ſo far as the interlocutor would carry them, been obſerved, except as to extracts. The dues of conferring arms, *&c.* are uniformly totally different. From thence it muſt follow, that a very different conſtruction has been put upon the ſtatute by the lieges, from that which has been now aſſumed by the Court; and that the ſtatute, if ever it was in force, is now in total diſuſe. But the petitioner apprehends he has already ſufficiently ſhown, that this ſtatute never was in force ſo as to limit the dues of matriculation to ten merks, and that it never was the intention of the ſtatute ſo to do; and, therefore, he apprehends he need go no further to obtain an alteration of the interlocutor complained againſt; for when your Lordſhips ſee, from the remoteſt evidence now extant, that a particular conſtant uſage, as to theſe fees has prevailed, *preſumitur retro*, as in all other caſes of evidence, that the ſame uſage muſt have exiſted during a previous period,

But the book produced, and the condeſcendence he formerly gave in, proves this further propoſition, That, for more than twenty years, the Lyon has been in uſe to exact higher dues; it therefore placeth him *in poſſeſſorio*: And, as in the exerciſe of every other right, ſeven years poſſeſſion would entitle him to a poſſeſſory judgment, the petitioner apprehends he is entitled, in the preſent queſtion, to demand his full dues, till ſuch time as the defender ſhall prove a contrary uſage, or ſhall reduce his right, which, if he is well founded, he may poſſibly be able to do, by recovering documents of former payments. But, as the evidence produced places the petitioner *in poſſeſſorio*, it muſt neceſſarily throw the *onus probandi* upon the defender, who has hitherto produced no document to ſupport his allegation, except a verbal criticiſm upon the ſtatute 1672, which, it is hoped, it has already been ſufficiently ſhown, is not founded in a fair conſtruction of that ſtatute, far leſs on what muſt be ſuppoſed to have

been the powers, privilege, and uſage of the Lyon Court, antecedent to the date of that ſtatute.

The petitioner need not bring under your Lordſhips view how hard it will be to deprive him of a freehold which he has poſſeſſed and enjoyed, without quarrel or interruption, for more than twenty years; nor need he inſinuate, that the ſale of offices is always proportioned to the perquiſites. He is unwilling to enter into an inveſtigation of the increaſe of dues in other offices; but, were it neceſſary for him to do it, he could be at no loſs to ſhow, that even where dues have been regulated by clear and expreſs ſtatute, there is ſcarcely any inſtance where a contrary uſage does not take place: And he humbly ſubmits, if there can be any reaſon, in the circumſtances of the preſent caſe, to ſacrifice his freehold, which has been lawfully, and may have been onerouſly acquired, to an idea of adhering ſtrictly and rigorouſly to ſtatutory regulations. A general reformation may be ſalutary; but there are no *termini habiles* for it in the preſent caſe; as, the petitioner apprehends, he has clearly demonſtrated, that he is not tied down by any ſtatutory regulation whatever, except as to the dues of furniſhing extracts of arms already diſtinguiſhed, recogniſed, and matriculated; and for which the dues for the reſpective duties have been already paid; but this is a predicament which cannot apply in the preſent caſe, in which it ſtands already determined, by the proceedings in the cauſe, that the defender's arms muſt be matriculated, and the proper dues of ſuch matriculation muſt be paid. The only queſtion before your Lordſhips being, What are the dues of ſuch matriculation? And, as to the dues of an extract, the petitioner admits, that the defender, though obliged to matriculate, as your Lordſhips have found, is at liberty to take ſuch extract, or not, as he pleaſes; and conſequently, may, if he chuſes to follow a frugal ſyſtem, ſave his ten merks, which are payable for an extract, and for an extract only.

The petitioner, unwilling to multiply words, or to recapitulate arguments which have been ſufficiently diſcuſſed in the former papers, ſhall leave the argument with your Lordſhips upon what has been above ſaid, with reſpect to the firſt part of the interlocutor, the dues of matriculation. If that ſhall be given for him, he apprehends it muſt be a neceſſary conſequence, that he will fall to be relieved from expences, which, he humbly apprehends, your Lordſhips will find cauſe, at any rate, to relieve him from in the preſent caſe. Theſe, it is evident, have been primarily incurred by the defender's refuſing to matriculate; and though, in the courſe of this diſpute, the argument has branched out into a variety of particulars, in ſome of which the petitioner has been unſucceſsful, yet as they all took

their

their riſe from this refuſal, to give obedience to the ſtatute, and as, in litigating theſe queſtions, the petitioner has himſelf incurred a very conſiderable expence already, he muſt, with ſubmiſſion, conſider the burdening him alſo with the expences of the defender as a great hardſhip; more eſpecially as, if it were neceſſary to go through them, the petitioner could be at no leſs to ſhew, that in every one of them, he was ſupported by reſpectable authority, and had a *probabilis cauſa litigandi*. Thus, in the queſtion concerning the Lyon's juriſdiction, he was ſupported by the expreſs authority of Lord Bankton, who lays it down, b. 4. tit. 9. par. 12. "That the Lord "Lyon is deſigned King of or at Arms, becauſe he has the ſole "power and juriſdiction concerning coats of arms or ſigns armo-"rial; and it is ſpecially ordained, that they be matriculated in the "Lyon's regiſter." And, in the queſtion how far a right to carry particular arms could be acquired by preſcription, the petitioner was ſupported by the authority of Sir George Mackenzie, the only writer in the law of Scotland who has treated of heraldry *ex profeſſo*; and, he apprehends, his argument was ſupported by the very definition of arms adopted by that very learned author. This argument was treated at great length in the purſuer's reclaiming petition, of date the 19th December 1776, as well as the particular circumſtance, that this coat armorial properly belonged to another family; and the petitioner cannot have a doubt, that if the queſtion had been put during theſe proceedings, the Court would have been of opinion, that the petitioner had a *probabilis cauſa litigandi* upon each of theſe arguments. He is fully perſuaded that your Lordſhips will not condemn him in expences, at a diſtance of time, which would not have been awarded while the proceedings were freſh in your Lordſhips memory; or, at leaſt, that this part of the interlocutor will not be adhered to without reviewing theſe proceedings; and in full perſuaſion that he cannot be loaded with expences after ſuch review, he ſhall humbly conclude.

May it therefore pleaſe your Lordſhips, to review and alter your above-recited interlocutor, of date the 25th June laſt, and to find, That the petitioner is entitled to the ſum of 12 *l. Sterling, (the reſtricted fees before mentioned) from the defender, as the dues of his matriculation, and to aſſoilzie the petitioner from the expences awarded againſt him.*

According to juſtice, *&c.*

ALEX. MURRAY.

COPY CONDESCENDENCE, Referred to in the preceding PETITION.

Jan. 16. 1777. IN obedience to an interlocutor of this date, appointing the purſuer "to give in a condeſcendence of the fees in uſe to be paid "by perſons of the defender's rank, for matriculation of their arms," the purſuer does condeſcend and ſay:

That when the arms of gentlemen of the defender's rank are matriculated in the records of the Lyon Office, with ſupporters, whether ſuch perſons, or their predeceſſors, have been in uſe to carry theſe ſupporters before ſaid matriculation or not, the loweſt fees paid by the perſon ſo matriculating, ſo far as the purſuer knows, (except in the ſpecial caſes, where there has been a former matriculation of the ſame perſon's arms, without ſupporters, or where the grant of ſupporters has been obtained directly from the King) were always above 28 *l.* Sterling; and for ſome time paſt, the ſtated regulated fees, payable upon ſuch occaſions, have been as follows, *viz.*

To Lord Lyon,	*L.*	21	0 0
Depute,		3	3 0
Clerk,		2	2 0
Keeper of the Record and Depute Clerk,		1	1 0
Seal, Painting, and Vellum,		1	14 0
White-iron Caſe,			1 6
In all,	*L.*	29	1 6

And, agreeably to what ſeemed to be your Lordſhips inclination, though not expreſſed in the above interlocutor, the purſuer does here annex a liſt of the names of ſeveral gentlemen, all and each of whom, (among many others, whoſe caſes are not perhaps ſo preciſely ſimilar to the caſe in hand) he does condeſcend and ſay, did, at the matriculation of their arms, make payment of the full fees before expreſſed, at leaſt all of them of the above ſum of 28 *l.* Sterling, as aforeſaid.

But, eſtabliſhed by long uſage, as theſe fees are, the purſuer muſt, in this condeſcendence, inform your Lordſhips, that the preſent Lord Lyon

Lyon, upon a ſuggeſtion, that the repreſentatives of families, who had been in the immemorial uſe of carrying ſupporters, were entitled to a greater degree of favour, upon matriculation, than thoſe who were only obtaining grants of ſuch ſupporters, did ſome time ago conſent, that the fees payable by perſons in that ſituation, ſhould be reduced to the fees payable by perſons for matriculation of arms and ſupporters, granted by expreſs warrant from the Sovereign, which amount only to about 12 *l.* The purſuer, however, ſubmits to your Lordſhips, that, after the extraordinary expence and trouble occaſioned by this defender, he can have no claim to the benefit of this new regulation.

(ſigned) JAMES BOSWELL.

LIST of the names referred to in the preceding CONDESCENDENCE.

Sir John Gordon of Invergordon, Bart.
Sir John Sinclair of Murkle, Bart.
Sir Alexander Purvis of Purvis, Bart. chief of the name.
Archibald Douglas of Douglas, Eſq;
Hugh Seton of Touch, Eſq;
Robert Campbell of Finab, Eſq;
Patrick Heron of Heron, Eſq; chief of the name.
John Macleod, Eſq; repreſentative of the Lords of the Lewis.
Alexander Chiſholm of Strathglaſs, Eſq;
Archibald Hamilton of Dalziel, Eſq;
James Denniſton of Colgrain, Eſq; repreſentative of the Lords of Denniſton.